

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3   UNITED STATES OF AMERICA,

4   vs.

                    Criminal No. 07-369

5   BRIAN LEE NESTOR,  
6           Defendant.

7           Transcript of Sentencing Proceedings on Wednesday, May 9,  
8   2008, United States District Court, Pittsburgh, Pennsylvania,  
9   before Donetta W. Ambrose, Chief District Judge.

10 APPEARANCES:

11 For the Government:       Bruce Teitelbaum, Esq.  
12                           Kay B. Lee, Esq.  
13                           Assistant U.S. Attorney  
14                           400 USPO and Courthouse  
15                           700 Grant Street  
16                           Pittsburgh, PA 15219

17 For the Defendant:       W. Penn Hackney, Esq.  
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20 Court Reporter: Juliann A. Kienzle, RMR, CRR  
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25 Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

1 (Proceedings held in open court; Wednesday, May 9, 2008.)

2 THE COURT: Good afternoon. We have a sentencing  
3 hearing this afternoon in the case of the United States of  
4 America against Brian Nestor.

5 For the record, I have received several letters.  
6 I've received a letter from Mr. Nestor's sister, Deborah  
7 Nestor, Philip McKees, a friend, and a letter from Thomas  
8 Bowman Young. Those are all the letters I have.

9 Does that seem to be the amount of letters that  
10 came?

11 MR. HACKNEY: Yes, that's what I have submitted.

12 THE COURT: Have you seen those, Ms. Lee?

13 MS. LEE: Yes.

14 THE COURT: Then I'm going to have them admitted  
15 into the record as court exhibits.

16 Mr. Nestor, would you stand and raise your right  
17 hand, please.

18 (Administration of the oath.)

19 THE COURT: Have you read the presentence report?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you reviewed it with Mr. Hackney?

22 THE DEFENDANT: Yes.

23 THE COURT: Is there any fact or anything else in

24 the report that you feel is not correct?

25 THE DEFENDANT: No.

1       THE COURT: Is there anything missing from the  
2 report which you think should have been included?

3       THE DEFENDANT: No.

4       THE COURT: The government previously filed a  
5 statement indicating that they had no objections to the  
6 report.

7       Is that correct, Ms. Lee?

8       MS. LEE: That is correct, Your Honor.

9       THE COURT: Mr. Hackney, is that your position as  
10 well? I know you filed a sentencing memorandum, but in terms  
11 of the facts and calculations in the report, do you believe  
12 everything is accurate?

13       MR. HACKNEY: The facts are. There's what I  
14 consider to be an important calculation question.

15       THE COURT: The one point.

16       MR. HACKNEY: The Count Two, it's not so much the  
17 one point, I don't mind the one point, but I need a separate  
18 sentence on Count Two. I believe the guideline range for  
19 Count Two should be 41 to 51 months and I would be seeking a

20 sentence at the low end of that range.

21 THE COURT: I didn't know that you -- you had

22 suggested in your submissions that perhaps the sentence on

23 Count Two not occur until maybe after the appeal had expired.

24 We know that we have Count One, which is a mandatory minimum

25 of ten years.

1 MR. HACKNEY: That would be satisfactory, Your  
2 Honor. That's certainly my second suggestion.

3 THE COURT: Did you talk to the government about  
4 this? Was there ever any discussion about it?

5 MS. LEE: We talked about the possibility of Your  
6 Honor imposing separate sentences for each of the counts. The  
7 government doesn't have an objection to that. Holding the  
8 sentence of Count Two in abeyance, though, I don't think that  
9 that is appropriate or necessary in this case.

10 THE COURT: Now, let me just ask. If we did that,  
11 if we sentenced separately on Count One and on Count Two, do  
12 you disagree with his calculations?

13 Take a minute and talk. I kind of agree with  
14 Ms. Lee. I don't want to hold this off for maybe two years.  
15 I know the appeals court says they do everything in three  
16 months, but we know differently.

17 MS. LEE: 46 to 57 months is what we'd agree to.

18 MR. TEITELBAUM: The dispute might be over the one  
19 point.

20 MR. HACKNEY: That's the point.

21 MR. TEITELBAUM: Mr. Hackney asked for the third  
22 point for acceptance of responsibility.

23 THE COURT: When you said the one point, I thought  
24 you meant the multiple Count One point that comes in on  
25 Paragraph 38. You were talking about the one point for



1 acceptance?

2 MR. HACKNEY: I was, the extra point for acceptance  
3 of responsibility that we do have a dispute over.

4 THE COURT: Why don't we do this -- well, that's on  
5 the guilty plea. That's on Count Two.

6 MR. HACKNEY: Yes, Your Honor. So how do you want  
7 to proceed then? If we have these separate sentencings, what  
8 would you like to do first?

9 The only question is whether Your Honor will  
10 calculate the sentence on Count Two based on a three-level  
11 reduction for accepting responsibility or a two-level  
12 reduction for accepting responsibility.

13 THE COURT: Let me just say something that you have  
14 in your submissions that I probably think we might have a  
15 misunderstanding about.

16 Obviously, under Booker, I can impose any  
17 reasonable sentence, but I can't impose or subtract a point  
18 for acceptance of responsibility. I can't do that because  
19 that's the government's province, right?

20 MR. HACKNEY: That is the government's province

21 given to them by the guidelines.

22 THE COURT: Right.

23 MR. HACKNEY: Which are advisory.

24 THE COURT: That's right. That's what I'm saying.

25 In your submissions, it makes it sound like the

1 Court can give that extra point for acceptance of  
2 responsibility. I don't think that's so. I think I can do  
3 any sentence that is reasonable under Booker, but if it's a  
4 guideline request, which acceptance of responsibility is part  
5 of the guidelines system, then that comes from the government.  
6 Right?

7 MR. HACKNEY: We'll have to disagree. I think Your  
8 Honor does not have to accept the government's recommendation  
9 on whether three points should be given or not.

10 THE COURT: So right now let me just get this  
11 straight.

12 MR. HACKNEY: Even within the guideline system.

13 THE COURT: Right now we're on Count Two. We're  
14 talking about Count Two?

15 MR. HACKNEY: Yes.

16 THE COURT: I guess I just have -- I don't know if  
17 it's a difference that really doesn't matter because, again, I  
18 think I can impose any sentence that is reasonable as long as  
19 I give reasons.

20 MR. HACKNEY: Yes, that's true.

21 THE COURT: And that my reasons are sound and

22 valid. But I don't think I can say you get an extra point for

23 acceptance of responsibility.

24 Now, I'll see what Ms. Lee has to say.

25 MS. LEE: Your Honor, I agree. I believe that the

1 government would have to move for Your Honor to subtract  
2 either two or three points from the guideline range as  
3 calculated. And the government agrees that he is entitled to  
4 a two-level reduction because he pled guilty prior to the  
5 commencement of trial. But that third point, even if Your  
6 Honor was able to grant it in your discretion or at your  
7 choosing, the government believes that he is not entitled to  
8 that third point because he pled guilty on the Friday before  
9 trial started on Monday.

10       The government had spent hours upon hours  
11 interviewing witnesses, going through exhibits, analyzing the  
12 computer, preparing for trial on both of those counts, that  
13 enticement count and the child pornography count, and it  
14 wasn't until the 11th hour, I believe it was the afternoon on  
15 the Friday before trial that the defendant chose to plead  
16 guilty at that point.

17       THE COURT: Mr. Hackney had suggested that perhaps  
18 there wasn't anything done between the initial appearance  
19 before Judge Caiazza and that Friday, but I don't think that's

20 --

21           MR. HACKNEY: Between the last of discovery on  
22 January 23, which was the last discovery and --

23           THE COURT: No interviewing of witnesses, no  
24 preparing them for trial?

25           MR. HACKNEY: That's my understanding.

1 THE COURT: Where did you get that understanding?

2 MR. HACKNEY: Because I have been talking to the  
3 government counsel about discovery and getting the information  
4 that they were going to use in the trial of Count Two.

5 THE COURT: It just seems to me -- I'll let them  
6 speak to this, but it would be unusual for the government to  
7 stop preparing for a trial scheduled in February sometime in  
8 January and to do nothing until the day the trial begins and  
9 come in and pick a jury. That would be unusual. But maybe  
10 that's what happened.

11 MS. LEE: It's simply not true, Your Honor. We  
12 were spending hours upon hours preparing for trial,  
13 interviewing witnesses, figuring out which exhibits we want to  
14 use, making sure that the computer analysis was done and that  
15 Mr. Teitelbaum and I understood it. We spent hours sitting  
16 with the agents. All of that time was done preparing for  
17 trial for both of these counts. Like I said, it wasn't until  
18 the 11th hour that the defendant chose to plead guilty to that  
19 second count, the possession of child pornography count for a

20 tactical reason. He had the right to do so, but given the  
21 time and given the sequence that all this stuff happened, we  
22 simply don't believe he is entitled to that third point.

23 MR. HACKNEY: I certainly can't contradict  
24 factually what Ms. Lee says. From the discovery I received,  
25 there would be one witness to testify to the computer, the



1 seizure of the computer and another witness to testify to what  
2 was on the computer. That was what we were working together  
3 on until -- through January 23. I don't know what they did  
4 since then, that's correct, but by January 23rd, I thought I  
5 had everything that they had and that they were going to offer  
6 into evidence. And so that's why I thought there wasn't any  
7 more substantial work done other than marking exhibits or  
8 something.

9 THE COURT: Here's what I want to do. I want to  
10 get more organized. If we are going to have two separate  
11 sentencings, let's begin with Count One, the count on which  
12 Mr. Nestor went to trial and was convicted. As I understand  
13 it, this is not your argument. Your argument is on Count Two.  
14 We're going to have a separate sentencing there.

15 Just so the record is clear, Count One carries a  
16 mandatory minimum sentence of 120 months.

17 Right?

18 MS. LEE: That's correct, Your Honor.

19 THE COURT: We both agree to that. We all agree to

20 that.

21 It is a period of supervised release of not less  
22 than five years or more than life and a fine of \$250,000.

23 Is that right?

24 MS. LEE: That's correct, Your Honor.

25 THE COURT: That is the range. That is the

1 advisory guideline range. It's more than that, it's a

2 mandatory minimum.

3 MR. HACKNEY: Yes, Your Honor.

4 THE COURT: So, obviously, my discretion is

5 curtailed. Mandatory minimum Booker doesn't apply. So we

6 know what it is for Count One.

7 So, do you have any further argument on Count One?

8 MR. HACKNEY: No, Your Honor.

9 THE COURT: How about the government?

10 MS. LEE: No, Your Honor.

11 THE COURT: Mr. Nestor, before I impose sentence on

12 Count One, which, as you know, carries a mandatory minimum

13 sentence, you are entitled to say anything at all that you

14 would like to say about that. It's your opportunity, if there

15 is something you'd like to say.

16 THE DEFENDANT: I just want to say that, you know,

17 a lot of this is -- if I would have known any -- if I could

18 see into the future and see what my actions would bring about

19 to my family and to my life, I wouldn't have even thought

20 about getting drunk, which I was drunk most of the time under  
21 alcohol and going on the computer and doing different things.  
22 I'm very sorry. As sorry as I could possibly be in my life.  
23 I have never been more sorry. I've lost the chance of ever  
24 seeing my mother again who is bedridden with MS. I probably  
25 won't see my dad again. I've lost not just my family, I've

1 lost my home, everything I own, my vehicle, my finances, more  
2 recently my health. I have severe health problems. Wednesday  
3 I get operated on. I've lost everything that a man can lose  
4 and I have never been more sorrier about anything in my life.

5       Since I have been in Beaver County jail, I've had  
6 the opportunity to re-establish my faith with God and I've  
7 done that and I go to as many meetings and Bible studies as I  
8 can. It says in Matthew, if you have as much as a mustard  
9 seed of faith, that God will be there for me. I'm sorry that  
10 I've used up everybody's time and the government's time, but I  
11 just want to say that I'm sorry to all those involved.  
12 Probably the most person I'm sorry to is my family. That's  
13 all I have to say.

14       THE COURT: Thank you, Mr. Nestor.

15       Well, I don't doubt anything that you have just  
16 said because I am sure that if you would have ever anticipated  
17 the repercussions that would attend to your actions, you would  
18 have, hopefully, not engaged in such conduct.

19       My job today is to impose a sentence that is

20 sufficient to but not greater than necessary to achieve the  
21 goals of sentencing. And the goals of sentencing are to  
22 impose just punishment for a crime, to consider how serious  
23 that crime is, to protect the public from further conduct by  
24 someone who engages in the kind of conduct that you have  
25 engaged in, and generally, to show the public that there are

1 dire consequences to these kinds of actions. And finally, to  
2 provide you with some effective correctional treatment so that  
3 your behavior can somehow be modified so that you can conform  
4 to what society expects out of its citizens.

5       Unfortunately, in this case, Congress has made a  
6 determination and the determination made by Congress is that a  
7 penalty of ten years must be imposed on an offense such as the  
8 one that you have been found guilty of by a jury. Now, I'm  
9 required to impose that sentence.

10       I know, I know how hard a sentence that is. I  
11 don't know what I can say to you today except that from what  
12 you have said to me, I am hoping that you will keep the faith  
13 that you have described to me throughout your period of  
14 incarceration, that it will be an experience that somehow you  
15 manage to get through and that you some day can return to  
16 society as an individual who can live within the bounds of the  
17 law. I know this is a difficult sentence. Believe me. But,  
18 the particular conduct encompassed in Count One is even more  
19 serious than that in Count Two. But your actions in enticing,

20 which is the title of the crime, an individual to bring a  
21 younger, an adolescent into a very harmful relationship is a  
22 danger to the public and the public has to be protected, and I  
23 can't second guess nor disobey the mandates of Congress in  
24 this area.

25       So for that reason and pursuant to the Sentencing



1 Reform Act of 1984, it is my judgment that the defendant,  
2 Brian Lee Nestor, be committed to the custody of the Bureau of  
3 Prisons to be imprisoned for a term of 120 months at Count  
4 One.

5       Upon release from imprisonment, you shall be placed  
6 on supervised release for a term of ten years at Count One.  
7 Within 72 hours of release from custody, you shall report in  
8 person to the probation office in the district in which you  
9 are released. While you are on supervised release, you shall  
10 not commit another federal, state or local crime. You shall  
11 comply with standard conditions of supervised release  
12 recommended by the Sentencing Commission and adopted by this  
13 court and you shall comply with the following additional  
14 conditions.

15       You shall not possess a firearm, ammunition,  
16 destructive device or other dangerous weapon.

17       You shall not illegally possess a controlled  
18 substance and shall refrain from the use of alcohol.

19       You shall participate in a program of testing and,

20 if necessary, treatment for substance abuse to include alcohol  
21 as directed by the probation office until such time as you are  
22 released from the program by the probation office. You shall  
23 be required to contribute to the cost of services for  
24 treatment in an amount determined by the probation office but  
25 not to exceed actual costs.

1           You shall submit to one drug urinalysis within 15  
2 days after being placed on supervision and at least two  
3 periodic tests thereafter.

4           You shall participate in a mental health treatment  
5 program and/or sex offender treatment program as approved and  
6 directed by the probation office and abide by all program  
7 rules, requirements and conditions of the sex offender  
8 treatment program, including submission to polygraph testing  
9 to determine your compliance with the conditions of release.

10          You shall report the address where you will reside  
11 and any subsequent change of address to the probation officer  
12 responsible for your supervision in accordance with federal  
13 law. Further, you shall register as a convicted sex offender  
14 in any state where you reside, where you are employed, where  
15 you carry on a vocation or where you are a student. You shall  
16 not possess any materials including pictures, photographs,  
17 books, writings, drawings, videos or video games depicting  
18 and/or describing child pornography as defined under federal  
19 law. You shall submit your person, your property, house,

20 residence, vehicle, papers, effects, computers and other  
21 electronic communication or data storage devices or media to  
22 search at any time, with or without a warrant, by any law  
23 enforcement or probation officer based upon reasonable  
24 suspicion of contraband evidence of a violation of a condition  
25 of release or supervision or unlawful conduct by you. Failure

1 to submit to a search may be grounds for revocation. You  
2 shall inform any other resident where you live that premises  
3 may be subject to search pursuant to this condition.

4       You shall cooperate in the collection of DNA as  
5 directed by the probation office. You shall pay to the United  
6 States the special assessment of \$100 to the United States  
7 District Court Clerk forthwith. In light of the fact that you  
8 have been incarcerated and will continue to be, I find that  
9 you do not have the ability to pay a fine and I'm waiving a  
10 fine in this case.

11       I am also recommending that you be deemed eligible  
12 for any sex offender and/or substance abuse and/or mental  
13 health treatment programs offered by the federal correctional  
14 institution in which you are incarcerated or any other federal  
15 correctional institution.

16       Now, Mr. Nestor, I'm advising you that you have a  
17 right to appeal this sentence within ten days from today. If  
18 you are unable to pay the costs of an appeal, you may apply  
19 for leave to appeal without the payment of costs. If you're

20 given permission to appeal without the payment of costs, you  
21 may request the Clerk of this court to prepare and file a  
22 notice of appeal on your behalf.

23 Is there anything further as to Count One?

24 MS. LEE: Nothing, Your Honor, from the government.

25 THE COURT: Mr. Hackney?

1 MR. HACKNEY: No, Your Honor.

2 THE COURT: We'll move to Count Two now.

3 As I understand Count Two, the issue, of course, is  
4 for me to decide whether or not the third point will be  
5 granted to Mr. Nestor.

6 Just so I know, I know you all agreed it was 46 to  
7 57.

8 MR. HACKNEY: With two levels off.

9 MS. LEE: That's correct.

10 MR. HACKNEY: With three levels off, it's 41 to 51  
11 months.

12 THE COURT: I realize the ultimate result has to be  
13 reasonable under the statute.

14 MR. HACKNEY: I was sort of obsessed about the  
15 point because I know that the guidelines are significant in  
16 the determination of what is a reasonable sentence.

17 THE COURT: The supervised release period for Count  
18 Two, does anyone know?

19 MR. HACKNEY: I think there's no minimum -- the

20 guidelines would be --

21 THE COURT: Is it five to life?

22 MS. LEE: I think it is zero to --

23 MR. HACKNEY: It's concurrent with the first one

24 anyway.

25 THE COURT: I know. I still want to know what it



1 is because I have to come up with an advisory range regardless  
2 of what I do for the Court of Appeals.

3 MR. HACKNEY: Any term of years?

4 MS. LEE: Yes.

5 THE COURT: All right. The fine? Is it 15 to 150?

6 MS. LEE: The statutory maximum is \$250,000 Your  
7 Honor.

8 THE COURT: Thank you. It is 250. I see it now.

9 Again, any further argument on Count Two? I know  
10 you have already done some, but I don't want to preclude you  
11 from anything more, Mr. Hackney.

12 MR. HACKNEY: As a matter of ultimate result, I  
13 think a sentence of close to three years would be appropriate.  
14 It won't matter if Mr. Nestor's appeal on Count One is  
15 unsuccessful. And if it is successful, I think that the three  
16 years is adequate to deter Mr. Nestor. He will have served a  
17 good deal of time by then. He's been serving time in the  
18 Allegheny County jail since September. He has recognized the  
19 enormity of his actions, the consequences of his actions. And

20 I just do not believe he is a risk of recidivism. I think he  
21 is the kind of person that is extremely unlikely to commit any  
22 sort of crime again. I think he is capable of -- he has  
23 proven since his capability of sustained and productive  
24 employment and should be permitted to return to society sooner  
25 rather than later, if the mandatory minimum is not an

1   impediment. So that's why I'm urging the Court to impose a  
2   sentence of something close to three years in the case on the  
3   count.

4           THE COURT: Ms. Lee.

5           MS. LEE: Your Honor, the government believes that  
6   the guideline range of 46 to 57 months, which is the base --  
7   which is the calculated offense level of 25 minus the  
8   two-level reduction for acceptance of responsibility is  
9   reasonable in this case.

10          The defendant in 2005 when he had his computer  
11   possessed by the FBI had hundreds of images of child  
12   pornography on that computer, including numerous videos. That  
13   computer was taken by the FBI and in the two years after that,  
14   up until when he was arrested for the enticement count, he was  
15   continually trying to obtain child pornography in the form of  
16   DVDs or videos, that is, noncomputer child pornography so he  
17   could watch it in the privacy of his own home without being  
18   detected or without the risk of being detected on the  
19   Internet. So, it was a continuous course of conduct that the

20 initial sort of contact with the FBI didn't squelch, it didn't

21 stop his search for child pornography.

22 As to the application of the reduction for

23 acceptance of responsibility, I won't rehash what I already

24 argued to the Court, but I just want to note that that third

25 point, it's not that the government is trying to be punitive

1 to the defendant in this situation, it's just as a matter of  
2 policy, across the board, with all of the defendants that we  
3 deal with, when the defendant chooses to plead at such a late  
4 date and at the 11th hour where the government has gone to the  
5 expense and the trouble and the work of preparing for trial,  
6 that third point just is not deserved at that point. So, I  
7 would just note that for Your Honor.

8 THE COURT: Mr. Nestor, again, if there's anything  
9 further you want to say. I'm not suggesting you have to, but  
10 if you want to, you certainly have the opportunity to do that.

11 THE DEFENDANT: I don't have anything more to add  
12 other than that if I was released at an earlier time, I have  
13 no intentions as even crossing the street the wrong way. I'm  
14 saying that from my heart. That's all I have to say.

15 THE COURT: Well, again, my job is to impose a  
16 sentence sufficient to but not greater than necessary to  
17 fulfill the purposes of sentencing.

18 Now, we have Count Two, which, quite frankly,  
19 perhaps maybe would not be viewed by the public or by other

20 people as serious as Count One, but that is not to say that  
21 this is not a serious offense. One of the things that  
22 concerns me is that there would not be a market for these  
23 horrendous images, whether they're on DVDs or photos, if there  
24 were not consumers, if there were not customers. If there  
25 were not people like you, Mr. Nestor, these things would not

1 exist. So, the existence of these DVDs, your quest repeatedly  
2 to ask Rob, the undercover police officer, to bring DVDs of  
3 young boys and porn and 18-year-olds with toddlers, repeatedly  
4 stressing a desire for films involving sex between a teenager  
5 and a toddler, constitutes for me a very serious offense. I  
6 recognize that you don't have a criminal history background,  
7 but this is a priority of the Department of Justice at this  
8 point, clearly. There are task forces on child pornography  
9 because it's an important societal interest. This is where  
10 resources are now being expended. Maybe conduct that would  
11 not have been caught in the past is being caught now because  
12 resources are being directed toward this kind of activity.  
13 While it might be inconceivable to somebody that this kind  
14 of -- these kinds of sentences would have been imposed in the  
15 past, now, this is the priority. I think it is a serious  
16 crime, and while there is nothing in your history or  
17 background that gives me the kind of concern that I have about  
18 someone who had repeatedly robbed banks, for instance, I do  
19 think that based on what Ms. Lee said, even after the initial

20 contact with the FBI, that this kind of conduct continued with  
21 you. That you weren't deterred by that makes me think that it  
22 might be something bigger than I understand. But that it  
23 is -- that you need to be deterred and you need to understand  
24 that these kinds of things are going to be punished.

25       So for that reason, when I look at the horrendous



1 nature of the crime, the victims of the crime, these young  
2 toddlers and infants and children, I don't know, there were  
3 probably, I don't remember if there were infants in this, I  
4 looked at everything, but I think there were some, that I need  
5 to address that in a way that I think protects society and  
6 gives you adequate punishment.

7       So, I think this. I think that a sentence within  
8 the advisory guideline range is appropriate. I do not elect  
9 because I don't think and I believe I should stay in the  
10 advisory guideline range here because I think it is an  
11 appropriate sentence. I think it addresses all of the goals  
12 of sentencing that I have talked about and the concerns of  
13 sentencing. I do believe that it is the government who moves  
14 for reductions for acceptance of responsibility. And  
15 furthermore, in terms of them not doing that here, I do  
16 believe that the acceptance of responsibility third point is  
17 not intended and should not be awarded to someone who pleads  
18 the Friday afternoon before the Monday scheduled for trial.  
19 It is not a timely plea. It is not a plea that gives the

20 government the opportunity to do less work or less

21 preparation. So, those are my reasons.

22 Pursuant to the Sentencing Reform Act, it is my

23 judgment that the defendant, Brian Lee Nestor, be committed to

24 the custody of the Bureau of Prisons to be imprisoned for a

25 term of 46 months at Count Two, to be served concurrent with

1 the sentence imposed at Count One.

2       Upon release from imprisonment, you shall be placed  
3 on supervised release for a term of ten years, concurrent with  
4 the supervised release period at Count One.

5       Within 72 hours of your release, you shall report  
6 in person to the probation office in the district in which you  
7 are released. While on supervised release, you shall not  
8 commit another federal, state or local crime. You shall  
9 comply with standard conditions of supervised release  
10 recommended by the Sentencing Commission and adopted by this  
11 court and you shall comply with the following additional  
12 conditions.

13       You shall not possess a firearm, ammunition,  
14 destructive devise or other dangerous weapon.

15       You shall not illegally possess a controlled  
16 substance and you shall refrain from the use of alcohol.

17       You shall participate in a program of testing, and,  
18 if necessary, treatment for substance abuse to include alcohol  
19 as directed by the probation office until such time as you are

20 released from the program by the probation office.

21           You shall be required to contribute to the costs of  
22 services for treatment in an amount determined by the  
23 probation office, not to exceed actual cost.

24           You shall submit to one drug urinalysis within 15  
25 days after being placed on supervision and at least two

1 periodic tests thereafter.

2       You shall participate in a mental health treatment  
3 program and/or sex offender treatment program as approved and  
4 directed by the probation office, and shall abide by all  
5 program rules, requirements and conditions including  
6 submission to polygraph testing to determine your compliance  
7 with conditions of release.

8       In accordance with federal law, you shall report  
9 the address where you will reside and any subsequent change of  
10 address to the probation officer responsible for your  
11 supervision. You shall register as a convicted sex offender  
12 in any state where you reside, are employed, carry on a  
13 vocation or where you are a student.

14       You shall not possess any materials including  
15 pictures, photographs, books, writings, drawings, videos or  
16 video games depicting and/or describing child pornography as  
17 defined under federal law.

18       You shall submit your person, property, house,  
19 residence, vehicle, papers, effects, computers and other

20 electronic communication or data storage devices or media to  
21 search at any time, with or without a warrant, by any law  
22 enforcement or probation officer based upon reasonable  
23 suspicion of contraband, evidence of a violation of a  
24 condition of release or supervision or unlawful conduct by  
25 you. Failure to submit to a search may be grounds for

1 revocation and you shall inform other residents that premises  
2 may be subject to search pursuant to this condition.

3       You shall cooperate in the collection of DNA as  
4 directed by the probation office. You shall pay to the United  
5 States a special assessment of \$100 which shall be paid  
6 forthwith to the United States District Court Clerk. I find  
7 that you do not have the ability to pay a fine and I'm waiving  
8 a fine as to Count Two.

9       Now, Mr. Nestor, I am also recommending that you be  
10 deemed eligible for any programs within the federal  
11 correctional institution relating to sex offender treatment,  
12 mental health treatment or substance abuse treatment.

13       I'm advising you that you have a right to appeal  
14 this sentence within ten days from today. If you are unable  
15 to pay the costs of an appeal, you may request permission to  
16 appeal without the payment of costs.

17       If you are given permission to appeal without the  
18 payment of costs, you may request the Clerk of the court to  
19 prepare and file a notice of appeal on your behalf.

20           Anything further from the government?

21           MS. LEE: No, Your Honor.

22           MR. HACKNEY: Your Honor, we'll take care of the

23 notice of appeal so he won't need to do that.

24           Secondly, I would ask if you could recommend that

25 the Bureau of Prisons consider locating him as close to Dover,



1 Delaware, as they can. Mr. Nestor's sister is here and would  
2 hope that he could be as close to their home because she's  
3 going to be working with possibly moving his parents down  
4 there.

5 THE COURT: I don't know what they will do, of  
6 course, but I'm glad to recommend that. As close to Dover,  
7 Delaware, as possible, if the government has no problem.

8 MS. LEE: No objection to that.

9 THE COURT: Did you move to dismiss the original  
10 indictment? This is a superseding indictment?

11 MR. TEITELBAUM: I honestly don't recall the answer  
12 to that. We'll check on that and file something.

13 THE COURT: The counts are all coming up, so check  
14 that. Thank you.

15 (Court adjourned.)

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17

# C E R T I F I C A T E

18

19 I, Juliann A. Kienzle, certify that the  
foregoing is a correct transcript from the record of proceedings

20 in the above-titled matter.

21

s/Juliann A. Kienzle

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Juliann A. Kienzle, RMR, CRR

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